Supreme Court, U.S.
FILED
DEC 27 2000
OFFICE OF THE CLERK

No. 00-755

IN THE

Supreme Court of the United States

SAN FRANCISCO BASEBALL ASSOCIATES L.P., d/b/a SAN FRANCISCO GIANTS, *et al.*,
Petitioners,

v.

YAN CARLOS RAVELO MONEGRO, *et al.*,
Respondents.

On Petition for a Writ of Certiorari to the United States Court of Appeals for the Ninth Circuit

REPLY BRIEF

NANCY E. PRITIKIN
PHILIP L. ROSS
LITTLER MENDELSON
A Professional Corporation
650 California Street, 20th Floor
San Francisco, CA 94108-2693
(415) 433-1940

JACK F. BAIR
SENIOR VICE PRESIDENT
& GENERAL COUNSEL
SAN FRANCISCO GIANTS
Pacific Bell Park
24 Willie Mays Plaza
San Francisco, CA 94107
(415) 972-1755

CARTER G. PHILLIPS*
BRADFORD A. BERENSON
STEPHEN B. KINNAIRD
SIDLEY & AUSTIN
1722 Eye Street, NW
Washington, DC 20006
(202) 736-8000

Counsel for Petitioners

December 27, 2000

*Counsel of Record

WILSON-EPES PRINTING CO., INC. – (202) 789-0096 – WASHINGTON, D. C. 20001

TABLE OF CONTENTS

	Page
TABLE OF AUTHORITIES	ii
ARGUMENT	1
CONCLUSION	10

TABLE OF AUTHORITIES

CASES Page

Canada Malting Co. v. *Paterson Steamships, Ltd.*, 285 U.S. 413 (1932) 5
Gould, Inc. v. *Pechiney Ugine Kuhlmann*, 853 F.2d 445 (6th Cir. 1988) 7
Gulf Oil Corp. v. *Gilbert*, 330 U.S. 501 (1947) 1, 2, 3
Koster v. *Lumbermens Mut. Cas. Co.*, 330 U.S. 518 (1947) ..... *passim*
Piper Aircraft Co. v. *Reyno*, 454 U.S. 235 (1981) ..... *passim*
Reyno v. *Piper Aircraft Co.*, 479 F. Supp. 727 (M.D. Pa. 1979), *rev'd*, 630 F.2d 149 (3d Cir. 1980), *rev'd*, 454 U.S. 235 (1981) 5
Reyno v. *Piper Aircraft Co.*, 630 F.2d 149 (3d Cir. 1980), *rev'd*, 454 U.S. 235 (1981) 5
Stewart v. *Dow Chem. Co.*, 865 F.2d 103 (6th Cir. 1989) 6, 7
Wiwa v. *Royal Dutch Petroleum Co.*, 226 F.3d 88 (2d Cir. 2000) 7, 8

OTHER AUTHORITIES

1 Ralph H. Folsom & Michael W. Gordon, *International Business Transactions* (1995) 9
2 Ralph H. Folsom & Michael W. Gordon, *International Business Transactions* (1995) 9
Christopher J. Hunt & John J. Bartko, *Recent Developments - Forum Non Conveniens*, SE99 ALI-ABA 291 (2000) 8

ARGUMENT

In this case, the district court, applying the doctrine of *forum non conveniens*, carefully balanced the private- and public-interest factors set forth in *Piper Aircraft Co.* v. *Reyno*, 454 U.S. 235 (1981), and *Gulf Oil Corp.* v. *Gilbert*, 330 U.S. 501 (1947). Pet. App. 19a-21a. Noting the parallel litigation initiated by respondents in the Dominican Republic, *id.* at 13a-14a, the district court dismissed respondents' complaint because the allegedly unlawful conduct took place almost entirely in that country, "many more" witnesses would be Dominican than American, the American evidence could easily be transferred to the Dominican Republic, almost all claims would involve foreign law, and "San Francisco's interest in these proceedings is minimal compared with the Dominican Republic's . . . much greater interest in ensuring that its citizens are not harmed by foreign employers." *Id.* at 19a-21a.

In reversing that order on appeal, the Ninth Circuit announced that, even as to cases brought by foreign plaintiffs litigating conduct principally occurring abroad, "'the standard to be applied to a motion for dismissal on the ground of *forum non conveniens* is whether defendants have made a clear showing of facts which establish such oppression and vexation of a defendant as to be out of proportion to plaintiff's convenience, which may be shown to be slight or nonexistent.'" Pet. App. 10a. (brackets and ellipses omitted). That standard is in square conflict with the precedents of this Court and other courts of appeals.

Respondents' arguments in opposition to certiorari are unpersuasive. First, their claim that the decision below is a garden-variety application of the law established by this Court is based on a demonstrable misreading of the cases. In fact, the Ninth Circuit's newly fashioned standard is more restrictive even than the standard for American plaintiffs

suing in their home forum set forth in *Koster* v. *Lumbermens Mutual Casualty Co.*, 330 U.S. 518 (1947), and is simply irreconcilable with the rule established in *Piper* for cases brought by foreign plaintiffs. Second, respondents say there is no conflict in the circuits, but fail to explain away the Sixth and Second Circuit cases that have expressly rejected application of the oppression-and-vexation standard in foreign-plaintiff cases. Third, respondents' factbound criticisms of the district court's order are both insubstantial and irrelevant to conflicting legal interpretations of the *forum non conveniens* standards among the courts of appeals. Because of the Ninth Circuit's break from the law established by this Court, the mature and significant conflict in the circuits, and the importance of the *forum non conveniens* doctrine to the administration of the federal courts in a global age, this Court should grant the petition.

1. Respondents insist that the Ninth Circuit engaged in nothing "but a mundane, routine application of the standards set by this Court." Opp. 13. That is wrong, and the conflict between the decision below and the precedents of this Court is manifest if the latter are examined in order:

a. ***Gilbert.*** In *Gilbert*, this Court held that there was no precise rule for a *forum non conveniens* determination, which "leaves much to the discretion of the court to which plaintiff resorts." 330 U.S. at 508. The Court stated that among the factors to be considered is "the private interest of the litigant." *Id.* The Court acknowledged that

> [i]t is often said that the plaintiff may not, by choice of an inconvenient forum, "vex," "harass," or "oppress" the defendant by inflicting upon him expense or trouble not necessary to his own right to pursue his remedy. *But unless* the balance is strongly in favor of the defendant, the plaintiff's choice of forum should rarely be disturbed.

Id. (emphasis added) (footnote omitted). In other words, when considering the private interests of the parties, vexation and oppression are ordinarily enough to justify dismissal, but overall the district court engages in a balancing of private conveniences that defers to the plaintiff's choice of forum. This is exactly how this Court in *Piper* described *Gilbert*'s treatment of private interest factors: "Under *Gilbert*, dismissal *will ordinarily be appropriate* where trial in the plaintiff's chosen forum imposes a heavy burden on the defendant or the court, and where the plaintiff is unable to offer any specific reasons of convenience supporting his choice." 454 U.S. at 249 (emphasis added).

However, the Court in *Gilbert* made clear that the assessment of private interests did not end the inquiry; "[f]actors of public interest also have place in applying the doctrine." 330 U.S. at 508. Those factors include two that the district court below found significant: namely, the relationship of the forum to the litigation, and the "local interest in having localized controversies decided at home." *Id.* at 509. Importantly, in reviewing the district court's dismissal order in *Gilbert*, this Court did not declare vexation and oppression to be the determinative standard the defendant had to meet. Rather, it reviewed the private *and* public-interests, *id.* at 509-12, and simply concluded that "the District Court did not exceed its powers or the bounds of its discretion in dismissing plaintiff's complaint and remitting him to the courts of his own community." *Id.* at 512.

b. *Koster.* *Koster*, decided the same day as *Gilbert*, applied the *Gilbert* factors in the special circumstance where an American plaintiff sues in his home forum. This Court began with the simplest case: "*Where there are only two parties to a dispute*, there is good reason why it should be tried in the plaintiff's home forum if that has been his choice." 330 U.S. at 524 (emphasis added). Because such a plaintiff is entitled to "the presumed advantages of his home jurisdiction," a district court should not order dismissal

> except upon a clear showing of facts which *either* (1) establish such oppressiveness and vexation to a defendant as to be out of all proportion to plaintiff's convenience, which may be shown to be slight or nonexistent, *or* (2) make trial in the chosen forum inappropriate because of considerations affecting the court's own administrative and legal problems.

Id. at 524 (emphases added).

Four elements of *Koster* are noteworthy. First, as the Court made clear, the special deference rule of *Koster* does not apply even to all American home-court plaintiffs, much less to all plaintiffs. Indeed, *Koster* held that no deference was due to a plaintiff's choice of his home forum in a derivative action, because the court was not home to all the interested potential plaintiffs. *Id.* at 524-25. Second, the first prong of the *Koster* standard, dealing with private interests, is stricter than *Gilbert*. It is a principle of maximum deference to the home-court plaintiff. Whereas in *Gilbert* oppression and vexation of the defendant "ordinarily" result in dismissal, *Piper*, 454 U.S. at 249, under *Koster*, if no public interests are at stake, the defendant may *only* secure dismissal upon a clear showing not only of oppression and vexation, but that which is "out of all proportion to plaintiff's convenience, which may be shown to be slight or nonexistent." 330 U.S. at 524. Third, this Court made clear that "even in the ordinary action, the residence of the suitor will not fix the proper forum without reference to other conditions." *Id.* at 525. Thus, the Court was careful to state a disjunctive two-part test, making clear that a district court could in its discretion under the second prong dismiss an action brought by a home-court plaintiff on the basis of public-interest factors, even absent oppression. *Id.* at 524. Fourth, far from announcing disproportionate oppression-and-vexation as the overall standard for dismissal, this Court held that "the ultimate inquiry is where trial will best serve the convenience of the parties and the ends of justice." *Id.* at 527. Reviewing the

balance of private and public interests, *id.* at 525-26, 531-32, the Court again upheld a dismissal order.

c. *Piper.* In *Piper*, this Court addressed *forum non conveniens* in the context of cases brought by plaintiffs from a foreign country. The district court had ruled that the "[*Gilbert*] factors need not be as strong in favor of defendants when the plaintiff is not an American citizen," *Reyno* v. *Piper Aircraft Co.*, 479 F. Supp. 727, 731 (M.D. Pa. 1979). When the forum is not in any sense a "'home' forum" because of lack of residency, the district court held, the foreign "plaintiff's choice of forum is entitled to little weight." *Id.* at 732. The Third Circuit disagreed, applying the *Koster* standard and holding (like the Ninth Circuit here) that "[i]t would be the rare situation in which a defendant could complain of being vexed or harassed by defending a lawsuit on its home ground." 630 F.2d 149, 159 (3d Cir. 1980).

This Court in *Piper* directly rejected the Third Circuit's analysis, and held that "[t]he District Court's distinction between resident or citizen plaintiffs and foreign plaintiffs is fully justified." 454 U.S. at 255. *Koster* had established a special rule that the home-court plaintiff is entitled to "greater deference" in his choice of forum because of the presumption of convenience. *Id.* at 255-56. That is a reference to the *Koster* rule that a district court, in balancing private interests, must defer to the plaintiff's choice of his home forum absent "a clear showing of . . . such oppressiveness and vexation to a defendant as to be out of all proportion to plaintiff's convenience, which may be shown to be slight or nonexistent." *Koster*, 330 U.S. at 524. *Piper* then expressly *rejected* the *Koster* "oppression-and-vexation" deference rule as inapplicable to foreign plaintiffs, for the assumption of convenience is "much less reasonable" for them. 454 U.S. at 256.[1]

---

[1] *See also Canada Malting Co.* v. *Paterson Steamships, Ltd.*, 285 U.S. 413, 423-24 (1932) (upholding the district court's dismissal of a case brought by a foreign plaintiff (against another foreign company regarding

In sum, the decision below is in irreconcilable conflict with this Court's precedents in three independent ways. First, the Ninth Circuit adopted the *Koster* disproportionate oppression-and-vexation standard as a general rule for all *forum non conveniens* determinations, whereas this Court was explicit that it only applies to home-court plaintiffs. Second, this Court in *Piper* expressly rejected the *Koster* maximum-deference standard in cases brought by foreign plaintiffs. Third, even in the special circumstance of home-court plaintiffs, *Koster* made clear that such oppression and vexation is a requirement of dismissal if only private-interest factors are at stake, *id.* at 524, but even in the absence of such oppression, public-interest factors could tip the balance toward dismissal because "the ultimate inquiry is where trial will best serve the convenience of the parties and the ends of justice," *id.* at 527. The Ninth Circuit ran roughshod over this distinction in making a clear showing of oppression and vexation of a defendant out of all proportion to the plaintiff's convenience an absolute requirement of dismissal. Pet. App. 10a.[2] Thus, the Ninth Circuit misstated the law of *forum non conveniens* in conflict with this Court's rulings; it did not simply "misappl[y] the properly stated rule of law," Opp. 12.

2. The decision below is also in square conflict with the rule of the Sixth and Second Circuits. In *Stewart* v. *Dow*

---

a ship collision in American waters) without any finding that the forum was disproportionately vexatious and oppressive to the defendant).

[2] Respondents acknowledge, as they must, that oppression and vexation of the defendant are only pertinent to the weighing of private interests, Opp. 14, and strain to argue that the Ninth Circuit reviewed the public interest factors independently of that standard, *id.* at 14-15. It did no such thing; it stated a flat rule that oppression and vexation is "'the standard to be applied to a motion for dismissal on the grounds of *forum non conveniens*,'" and that the district court "misunderstood this standard" in dismissing the action based on its consideration of the *Gilbert* factors. Pet. App. 10a (brackets omitted). Regardless, even under respondents' reading of the opinion below, the Ninth Circuit standard is still in conflict with this Court's decisions for the first two reasons given above.

Chemical Co., 865 F.2d 103 (6th Cir. 1989), the Sixth Circuit rejected a requirement that a defendant prove that it would be "'oppressive'" for the litigation to proceed in the American court because "[s]uch a high standard would constitute a misreading of *Piper* and its progeny." *Id.* at 106. Respondents weakly argue that this "statement was not limited to foreign plaintiffs." Opp. 17. But *Stewart* involved a case brought by foreign plaintiffs, and was construing *Piper*, which sets the rule for foreign plaintiffs. Besides, even if *arguendo* the Sixth Circuit's rule were not so limited, it would still conflict with the Ninth Circuit's rule, which applies a uniform oppression-and-vexation standard to foreign and domestic plaintiffs alike.[3] Finally, contrary to respondents' claims, Opp. 17-18, the Sixth Circuit expressly held in *Gould, Inc.* v. *Pechiney Ugine Kuhlmann*, 853 F.2d 445 (6th Cir. 1988), that the *Koster* oppression-and-vexation rule applied only when the "plaintiff . . . is a United States citizen," and "different principles regarding *forum non conveniens* apply . . . when a foreign citizen attempts to avail himself of a United States forum." *Id.* at 454.

Respondents also wrongly deny the split with the Second Circuit, mischaracterizing petitioners' argument and then discourteously claiming that it "approaches dishonesty." Opp. 18. In simply quoting the Second Circuit's statement that *Piper* established "a neutral rule that compares the convenience of the parties," *Wiwa* v. *Royal Dutch Petroleum Co.*, 226 F.3d. 88, 102 (2d Cir. 2000); Pet. 17, petitioners never suggested that the Second Circuit held that *Piper* allows a district court to decline jurisdiction on the slightest showing that private interests favor the defendant. Rather, the Second

---

[3] Respondents point to *Stewart*'s quotation from *Piper* that "'dismissal will ordinarily be appropriate where trial in the plaintiff's chosen forum imposes a heavy burden on the defendant,'" 865 F.2d at 106 (alteration omitted) (quoting 454 U.S. at 249). The Sixth Circuit quoted that passage to clarify that while oppression of the defendant "would be sufficient" for dismissal in any case, "there is no [such] requirement in *Piper*." *Id.*

Circuit correctly recognized that, in cases brought by foreign plaintiffs, *Piper* established a "neutral rule" that removes the thumb on the scale in favor of the plaintiff by virtue of his identity as an American citizen, or (as in *Koster*) by the weight of his residency in the forum.[4] As this Court held in *Piper*, affirming the analysis of the district court, the "strong presumption" requiring the defendant to show that the *Gilbert* factors "clearly point towards trial in the alternative forum . . . applies with less force when the plaintiff or real parties in interest are foreign." 454 U.S. at 255. In any event, what the Second Circuit plainly holds – and respondents do not deny this – is that the *Koster* oppression-and-vexation standard is strictly a rule of deference for plaintiffs with "U.S. citizenship and residence." *Wiwa*, 226 F.3d at 102 & n.9. That is the direct conflict with the Ninth Circuit.[5] It is intolerable for there to be divergent *forum non conveniens* standards in these circuits, which are all home to major multinational corporations subject to suits of this kind.

3. Respondents devote much of their brief to an unavailing attempt to "Americanize" this dispute by outlining putative connections of the litigation to this country, and to criticizing the district court's order. Their contentions are irrelevant to the proper legal standard for *forum non conveniens* dismissals, and at best are issues to be raised at the merits stage. Space does not permit full reply, but the following points should be made.

First, respondents emphasize their signing of standard Minor League Uniform Player Contracts that gave the Giants the right to assign them to any minor league club, without

---

[4] It was not referring to "neutrality from chauvinism or bias," Opp. 18, whatever that means.

[5] There is a related split between the First and Second Circuits on the meaning of *Koster* that also may be resolved by this Court's clarification of the *forum non conveniens* standard. *See* Christopher J. Hunt & John J. Bartko, *Recent Developments – Forum Non Conveniens*, SE99 ALI-ABA 291, 293 (2000).

geographical restriction, and that contained a choice-of-law clause stating that the contract shall be governed by New York law. Opp. 1-2. But that hardly distinguishes this case from any other suit by a foreign plaintiff against an American company. Almost all international business transactions of any kind – employment, agency, licensing, franchising, sales and distribution, subcontracting, technology transfer, investment, joint ventures – are governed by contract, often with standard forms, choice of American law, and no geographical restriction on performance.[6] Moreover, this is not a contract-interpretation dispute; respondents concede "[t]he gravamen of the complaint is *quid pro quo* sexual harassment and wrongful termination in violation of public policy." *Id.* at 3. Although 12 of the 13 respondents do not even claim injury outside the Dominican Republic, respondents emphasize that the complaint does allege *some* conduct occurring in the United States. *Id.* at 2-4. But that is only one factor for the district court to weigh. In *Piper*, this Court upheld a dismissal order when *all* of the alleged illegal conduct of the defendants (defective product design and manufacture) occurred in the United States. Pet. 19.

Second, respondent's own complaint refutes their contention that only two of their 16 claims arise under Dominican law, Opp. 3 n.2.[7] In any event, a plaintiff's attempt to invoke American law "should ordinarily not be

---

[6] *See, e.g.*, 1 Ralph H. Folsom & Michael W. Gordon, *International Business Transactions* 2 (1995) ("the commercial relationship between the United States producer and the foreign agent or distributor *must* be reduced to written agreement"); *see id.* at 26-45, 72-123, 691, 714-36, 764-95 (collecting sample sales, distribution, countertrade, franchising, technology transfer, and licensing agreements); 2 *id.* at 68-132 (discussing and collecting sample forms and clauses of joint venture agreements).

[7] *See* Complaint ¶¶ 184, 186, 193 (two claims based on Dominican statutes); *id.* at 203, 211, 222, 230, 237, 254 (six common law claims based on the district court's supplemental jurisdiction "to hear and adjudicate claims arising from the transactions set forth above that violate rights and duties established by the law of the Dominican Republic").

given . . . substantial weight in the *forum non conveniens* inquiry." *Piper*, 454 U.S. at 247.

Third, respondents fault petitioners for "failing to distinguish between the Dominican civil and criminal actions." Opp. 4. There are no separate actions; there is a single joint action in which the criminal investigation is the first phase. Moreover, not only have the respondents not dismissed their civil claims in the Dominican Republic, but the conduct in question will be fully litigated in that country, and that is where the matter belongs.

Fourth, respondents argue that the district court's findings regarding witnesses were not supported by affidavits. Not only is extensive witness investigation not required because it "would defeat the purpose of [the] motion," *Piper*, 454 U.S. at 258, but, as a defendant in the Dominican proceedings, the Giants could hardly be expected to produce such affidavits when (as respondents acknowledge, Opp. 4) initial discovery is the exclusive province of the Dominican authorities. Respondents' argument is also ironic, given that they do not dispute that there is *no* record evidence to support their principal argument in favor of American jurisdiction – the claimed unavailability of Rosa. Pet. 8-9, 20.[8]

In sum, the decision below is in conflict with the decisions of this Court and other courts of appeals, and in a global age, with plaintiffs resorting to broad jurisdictional statutes (such as the Alien Tort Claims Act) to litigate foreign conduct in federal court, it is imperative that this Court clarify the proper standards for applying the *forum non conveniens* doctrine.

CONCLUSION

This Court should grant the petition for certiorari.

[8] There is an affidavit in the record that Rosa is subject to extradition, and respondents do not here contest that he could be compelled to testify by videotaped deposition. *See* Pet. 9. In any event, Rosa represents to this Court that he "will continue to vigorously defend himself against the allegations made against him in the Dominican Republic." Rosa Br. 1.

Respectfully submitted,

NANCY E. PRITIKIN
PHILIP L. ROSS
LITTLER MENDELSON
A Professional Corporation
650 California Street, 20th Floor
San Francisco, CA 94108
(415) 433-1940

CARTER G. PHILLIPS*
BRADFORD A. BERENSON
STEPHEN B. KINNAIRD
SIDLEY & AUSTIN
1722 Eye Street, N.W.
Washington, D.C. 20006
(202) 736-8000

JACK F. BAIR
SENIOR VICE PRESIDENT
& GENERAL COUNSEL
SAN FRANCISCO GIANTS
Pacific Bell Park
24 Willie Mays Plaza
San Francisco, CA 94107
(415) 972-1755

Counsel for Petitioner

December 27, 2000

* Counsel of Record